

EXHIBIT B

2011.03.25 Hearing - Injunctive Relief 3/25/2011 8:54:00 AM

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1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE EASTERN DISTRICT OF VIRGINIA
3 RICHMOND DIVISION
4 -----
5 :
6 ePLUS, INC., :
7 :
8 Plaintiff, :
9 :
10 v. : Civil Action
11 : No. 3:09CV620
12 LAWSON SOFTWARE, INC., :
13 : March 25, 2011
14 Defendant. :
15 -----
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17 DAILY COPY
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19 COMPLETE TRANSCRIPT OF EVIDENTIARY HEARING
20 BEFORE THE HONORABLE ROBERT E. PAYNE
21 UNITED STATES DISTRICT JUDGE
22
23 APPEARANCES:
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25 Jennifer A. Albert, Esq.
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DIANE J. DAFFRON, RPR
OFFICIAL COURT REPORTER
UNITED STATES DISTRICT COURT

1 (The proceedings in this matter commenced at
2 9:30 a.m.)
3
4 THE CLERK: Civil Action No. 3:09CV620,
5 ePlus, Incorporated v. Lawson Software, Incorporated.
6 Mr. Scott L. Robertson, Mr. Craig T. Merritt,
7 Ms. Jennifer A. Albert, Mr. Michael G. Strapp
8 represent the plaintiff. Mr. Daniel W. McDonald,
9 Mr. Dabney J. Carr IV, Ms. Kirstin L. Stoll-DeBell,
10 Mr. William D. Schultz, and Ms. Rachel C. Huey
11 represent the defendant.
12 Are counsel ready to proceed?
13 MR. ROBERTSON: The plaintiff is, Your Honor.
14 MR. McDONALD: Lawson is as well, Your Honor.
15 THE COURT: All right. This is the
16 evidentiary hearing on the issue of an injunction.
17 Is there another firm coming into this case
18 for you-all?
19 MR. McDONALD: The Finnegan firm is involved,
20 Your Honor, but they are not going to be participating
21 in this hearing. They are going to be involved with
22 the appeal primarily, but they wanted to have access
23 to the documents.
24 THE COURT: Oh, okay.
25 Mr. Robertson.

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1 APPEARANCES: (Continuing)
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1 MR. ROBERTSON: Good morning, Your Honor.
2 If I might, I just have a few brief opening
3 remarks to just sort of put some of the issues in
4 context and then preview for the Court or highlight
5 some of the topics that are going to be addressed
6 today by Mr. Farber's testimony, if that's
7 permissible.
8 THE COURT: All right.
9 MR. ROBERTSON: First, we are here to discuss
10 the supplemental evidence, testimony and documentation
11 that have been provided to the Court and exchanged by
12 the parties since the trial ended that we believe will
13 support the Court's discretion to grant an injunction
14 in this case to prevent the ongoing infringement of
15 ePlus' patents.
16 We certainly don't want to be here today, and
17 I know the Court doesn't want to retry the case, or
18 reargue a number of the issues involving hotly
19 contested issues that are before the Court.
20 That said, there will be some additional
21 details concerning evidence that did come out that we
22 think would be important for the Court to consider.
23 I'd just like to highlight Section 154 of the
24 Patent Act. Your Honor, the only right conferred upon
25 a patent owner under the Patent Statute is the right

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HAGER - DIRECT 218

1 So try to confine it to what actually

2 happens. That's what's important anyway. And that's

3 really what he knows most about, I would assume.

4 MR. McDONALD: Fair enough.

5 BY MR. McDONALD:

6 Q Can we talk, Mr. Hager, about the tracking that

7 your system does for those medical supplies for

8 operations? Can you walk us through how the Lawson

9 system is used to track, for example, the supplies

10 that are used for surgery in a hospital?

11 A Again, at the beginning of the process is the

12 inventory management and inventory counting that is

13 done. And that all gets loaded up into the system

14 where somebody looks at the system and determines in

15 what hospitals they need to have which materials

16 purchased, so that they have the adequate in stock

17 equipment.

18 And then they run those through the purchase and

19 were able to follow it through the process to the

20 loading dock, to the invoice matching, and ultimately

21 follow that device all the way into the operating

22 room.

23 Q So your system actually tracks the inventory used

24 in surgery all the way into the operating room?

25 A Correct.

HAGER - DIRECT 220

1 THE WITNESS: I understand.

2 THE COURT: Now, if you're shut down and a

3 government agency comes in and finds that you're

4 committing fraud and shuts down all your operations to

5 do a search and seizure, how is somebody, for example,

6 who's using your system going to operate? Do you know

7 that?

8 THE WITNESS: On day one, they would simply

9 operate at risk.

10 THE COURT: They would find a way is what

11 would happen.

12 THE WITNESS: For money, yes, they would.

13 THE COURT: Of course, it would. Of course,

14 it would.

15 Now, suppose that we had a terrible

16 catastrophe that wiped out where you have most of your

17 support system. Are the hospitals going to be able to

18 find somebody to help them straighten out and track

19 what's going on and be able to provide surgeries to

20 people; yes or no?

21 THE WITNESS: There's always a way.

22 THE COURT: There's a way. The question is:

23 How much, right?

24 THE WITNESS: Correct.

25 THE COURT: And how much inconvenience?

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HAGER - DIRECT 219

1 Q You indicated the amount of time it would take to

2 go to an alternative system. Do you have an estimate

3 as to how long it would take a customer to actually

4 select and verify and implement a system that would

5 replace the Lawson eProcurement functionality?

6 A It's entirely up to the customer as to how long it

7 would take to select, but from an implementation

8 perspective knowing how complex those implementations

9 are, and I don't believe it's overstating it to say it

10 would be nine months probably on average.

11 Q Is that within the range Mr. Farber provided

12 today?

13 A He provided 30 days to six months to potentially

14 longer. Because of the very complex health care

15 organization we run, I believe it would fall in the

16 typically longer.

17 I do say that with some level of expertise. We

18 have 277 requisition self service health care only

19 customers that represent 2500 different hospitals,

20 which is about a third of the hospitals in the United

21 States. We do have a lot of experience.

22 THE COURT: You have a lot of business and

23 you have a lot of infringement, according to the jury.

24 So the question I have to deal with is how to deal

25 with it.

HAGER - DIRECT 221

1 THE WITNESS: Correct.

2 THE COURT: Okay. That's the way you

3 circumscribe the issue, not try to convince somebody

4 that it's just going to all stop, the world is going

5 to stop, because it's not going to stop.

6 Is it going to be costly? Yes. Is it going

7 to be a problem? Yes. Is it some risk? Yes.

8 That's what the balancing in this case has to

9 deal with. Not overselling. Don't oversell the

10 product. The risk is the hearer just says that's just

11 more puffery and I'm not going to pay anymore

12 attention to it. It's serious enough the way it is.

13 BY MR. McDONALD:

14 Q With respect to the support service Lawson

15 provides for these RSS and Punchout customers, Lawson,

16 do they actually generate purchase orders when they

17 are servicing customers?

18 A I'm sorry. I didn't understand.

19 Q Does Lawson itself actually generate purchase

20 orders for supplies when they're servicing customers

21 or is it more a matter of just solving the problem

22 from a software or technical standpoint?

23 A When you say --

24 THE COURT: Hold on.

25 MR. ROBERTSON: It's vague and ambiguous.

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1 that have RSS if they had to make a change; do you recall that?

2 A Yes.

3 Q Do you have an estimate as to how much it would cost

4 your -- let's take a hospital, how much money it would actually

5 cost them to make a change or not?

6 MR. ROBERTSON: Objection, lack of foundation, Your

7 Honor, and I think it's outside the scope of my cross-examine.

8 THE COURT: I think it's within the scope of your

9 cross-examination. I don't know whether he -- I think he's

10 asking a foundational question, that is whether he knows or has

11 any basis to know what the cost is.

12 MR. ROBERTSON: Also, certainly there was no

13 documentation produced in the supplemental period with respect

14 to the cost issue.

15 MR. McDONALD: But he asked about it, so I thought we

16 should flush that out. I'll ask the foundational question.

17 Q Mr. Hager, from your experience, do you have an idea of

18 how much it would cost, for example, a hospital to make that

19 change away from RSS?

20 A I do have some experience with that, yes.

21 Q Based on your experience, what would you believe to be the

22 likely cost to a hospital for that change?

23 A For a hospital, the hospital -- very large hospitals I

24 think would be more expensive than some of the non-hospital RSS

25 customers we have, so if I were to take the simplest

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1 implementation of our RSS and pull it out and put something

2 else in, you know, probably the simplest would be three months,

3 but I think on average for our hospitals, I bet you would it

4 probably be closer to nine months because of the complexities

5 of the hospital.

6 Q You gave me the time. I was actually asking -- maybe you

7 were thinking of time cost, but I think the question is

8 actually going to the monetary cost.

9 A Yeah, that's going to run somewhere north of 300,000, 3-

10 to 500,000 probably for that length of time. Maybe up to

11 750,000 on average. Some will be greater than a million.

12 THE COURT: Does it cost that much to put RSS in?

13 THE WITNESS: Some of our projects -- again, we put

14 RSS in in conjunction with everything else, but it's so tied

15 into the work flow approvals, and our work flow approvals are

16 based off everything that happens in RSS, so pulling RSS out

17 means you are rebuilding all those work flow approvals to go

18 with whatever new tool you are bringing in, and that's really

19 where the complication comes. I wish it didn't take this long,

20 but it does.

21 Q And finally, Mr. Robertson asked you about the advantages

22 of selling the full suite, and I want to clarify, if the

23 customer already has an SAP ERP suite, for example, do you have

24 an advantage over ePlus in selling to a customer like that

25 that's looking for eProcurement?

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1 A No. As a matter of fact, a disadvantage, because our RSS

2 and Punchout won't work with an SAP suite. We wouldn't even

3 attempt to make that sell.

4 Q So when is it that Lawson would have actually have some

5 advantage for offering the full suite that Mr. Robertson was

6 asking about?

7 MR. ROBERTSON: Your Honor, I didn't ask -- I asked

8 him about whether or not having that full suite put my client

9 at a disadvantage.

10 THE COURT: Sustained.

11 Q So in that situation then, can you explain what type of

12 customer would be the customer --

13 THE COURT: What situation?

14 Q Where Lawson would have that advantage or ePlus would have

15 the disadvantage to Lawson, what specific market situation

16 might that be?

17 A As was mentioned, when we're selling the entire integrated

18 suite, it's obviously because the customer wants a fully

19 integrated suite, so that would become our competitive

20 advantage. I should also mention that, you know, our RSS --

21 MR. ROBERTSON: Objection, Your Honor. He's

22 responded to the question.

23 THE COURT: Sustained.

24 THE WITNESS: Actually, it's a follow-on to the --

25 THE COURT: No, that's enough.

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1 Q If I understand, that's a situation where you are offering

2 a full suite including nonprocurement products? Did I

3 understand correct?

4 A Correct.

5 Q Does ePlus even offer nonprocurement products?

6 A Not to my knowledge, no.

7 MR. McDONALD: No further questions. Thank you.

8 THE COURT: Thank you very much. You may step down,

9 sir.

10 MR. ROBERTSON: Your Honor, if I might address one

11 issue. I just want to make sure that with the conclusion of

12 this testimony now and the submission that we've exchanged,

13 that this closes the evidentiary record.

14 THE COURT: The record on the injunction is closed.

15 Now --

16 MR. McDONALD: Just to clarify, Your Honor, there are

17 some exhibits that we put into these disclosures. We'd like

18 the option of referring to some of the other documents that

19 have been -- that involve these customers, for example. We

20 didn't want to bog down the testimony today with these

21 witnesses who may not have had personal knowledge.

22 There were certain things we were trying to get in

23 the testimony. I think maybe Mr. Robertson meant to include

24 the documents from our disclosures as part of the record, but

25 for live testimony, I think we agreed they were closed.

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1 MR. McDONALD: Your Honor, I'm not sure where we're
2 at. I've been asked to point out, in my self interest as well,
3 we have a 7:20 flight. Is it something that's going to end
4 soon, or do you want us --

5 THE COURT: Goodbye. I'm thinking about a slight
6 moving of the date of the hearing because of the length of what
7 you all have done on this one, but I won't do it, so go catch
8 your plane.

9 MR. McDONALD: Thank you, Your Honor.

10 THE COURT: All right.

11

12 (End of proceedings.)

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15 We certify that the foregoing is a correct transcript
16 from the record of proceedings in the above-entitled matter.

17

18

19 /s/

P. E. Peterson, RPR Date

20

21

/s/

22 Diane J. Daffron, RPR Date

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